

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THOMAS R. MILLER,	:	
	:	
Plaintiff,	:	C.A. No. 06-349 GMS
	:	
v.	:	
	:	
DR. MAGGIE BAILEY, CMS, and	:	
FIRST CORRECTIONAL	:	
MEDICAL, INC.,	:	
	:	
Defendants.	:	

**DEFENDANT CMS'S  
MOTION FOR ENTRY OF ORDER DISMISSING ALL CLAIMS AGAINST CMS**

Defendant Correctional Medical Services, Inc. ("CMS"), by and through its undersigned counsel of record, hereby moves for entry of an Order in the form attached hereto dismissing with prejudice all Plaintiff's claims against CMS. In support of its motion, CMS states as follows:

*Facts and Procedural Posture*

1. On May 22, 2006, Plaintiff initiated the above-captioned action by filing his Complaint alleging he was "overmedicated" as a result of medical negligence (D.I. 2). Plaintiff failed to file with his Complaint an affidavit of merit as required by 18 Del. C. § 6853.
2. On August 6, 2006 Plaintiff filed his Petition for Memorandum of Law, again alleging medical negligence resulting from overmedication, but filed no affidavit of merit with it (D.I. 10).
3. On January 3, 2007, Plaintiff moved to Amend Pleading on Civil Complaint to add First Correctional Medical, Inc. ("FCM") as a defendant (D.I. 17). On May 3, 2007,

Plaintiff filed a second Amended Complaint against FCM alleging inadequate and improper medical care. (D.I. 22) No affidavit of merit was filed with either pleading. This Amended Complaint also requested the Court “strike” Plaintiff’s “request for nominal and special damages on the prayer for relief of the Complaint Memorandum of Law” (sic) (D.I. 22 at 2). On May 9, 2007, the Court granted that motion (D.I. 23).

4. On June 18, 2007, defendant CMS filed its Answer to the Complaint, the Petition for Memorandum of Law and Amended Complaint (D.I. 26) denying, *inter alia*, any and all allegations of medical negligence and causation, and raising as a defense Plaintiff’s failure timely to comply with 18 Del. C. § 6853 by not filing an affidavit of merit.

5. On August 2, 2007 CMS moved to dismiss all State law claims of medical negligence. (D.I. 35).

6. On August 8, 2007, Plaintiff wrote to the Court requesting that all his claims against CMS be dismissed as the acts that form the basis of his pleadings occurred prior to CMS’s status as contractor to the Delaware State Prison System. (D.I. 39)

WHEREFORE, for the foregoing reasons, Defendant CMS respectfully requests entry of an Order in the form attached hereto dismissing with prejudice all of Plaintiff’s claims against CMS.

BALICK & BALICK, LLC

/s/ James E. Drnec  
James E. Drnec, Esquire (#3789)  
711 King Street  
Wilmington, Delaware 19801  
302.658.4265  
Attorneys for Defendant CMS

Date: August 9, 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THOMAS R. MILLER,	:	
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Plaintiff,	:	C.A. No. 06-349 GMS
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DR. MAGGIE BAILEY, CMS, and	:	
FIRST CORRECTIONAL	:	
MEDICAL, INC.,	:	
	:	
Defendants.	:	

**ORDER**

AND NOW, this \_\_\_\_\_ day of August, 2007, the Court having considered Defendant CMS's Motion for Entry of an Order Dismissing All Claims Against CMS, and all opposition thereto, it is hereby ORDERED that the Motion is GRANTED. All claims against CMS in the above-captioned action are dismissed with prejudice.

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J.

**CERTIFICATE OF SERVICE**

I, James E. Drnec, hereby certify that on this date, I served on the parties below in the manner indicated, copies of the Defendant CMS's Motion for Entry of Order Dismissing All Claims Against CMS.

**VIA FIRST CLASS MAIL**

Mr. Thomas R. Miller  
#144108  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

/s/ James E. Drnec  
James E. Drnec

Dated: August 9, 2007